IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7007 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAIWALA INDUSTRIES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 7007 of 2003

MR PARESH DAVE for MR FB BRAHMBHATT for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Shri Malkan, learned Standing Counsel for the respondents raised preliminary objection regarding maintainability of this petition before this Court on the ground that the petitioners have got alternative remedy

of Appeal u/s.35 of the Central Excise Act, 1944 before the Commissioner (Appeals), Central Excise. There is a lot of substance in this preliminary objection raised by Shri Malkan. Instead of challenging the impugned order in Appeal the petitioners have directly approached this Court by way of writ petition by challenging the validity of Section 3-A and Rule : 96(z)(p) as ultra-vires to the Constitution.

It is not in dispute that alternative remedy of Appeal u/s.35 of the Act was available to the petitioners. Therefore, only on this ground the petition can be disposed of by directing the petitioners to avail alternative remedy of Appeal. However, the said Appeal would be, by now, hopelessly time barred. Therefore, on peculiar facts and circumstances of the case, we dispose of this petition by directing the Commissioner (Appeals) to treat this petition, as filed before him u/s.35, and decide the same in accordance with law after extending an opportunity of hearing to the petitioners. It goes without saying that the Commissioner (Appeals) shall also keep in mind the orders passed by the Delhi High Court and the Hon'ble Supreme Court, which are annexed to this petition, while deciding the Appeals. Till the Commissioner (Appeals) decide the matter, interim relief granted in favour of the petitioners shall continue. Rule discharged, subject to aforesaid direction. No order as to costs.

(B.J.Shethna, J.)

Date : October 20, 2004

(Sharad D.DAve, J.)

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